

HB 676 -- UNLAWFUL DISCRIMINATORY PRACTICES

SPONSOR: Plocher

This bill changes the laws regarding unlawful discriminatory employment practices and establishes the "Whistleblower's Protection Act."

UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES

The bill specifies that, as used in Chapter 213, RSMo, the term "because" or "because of," as it relates to a decision or action, means that the protected criterion was the motivating factor. The bill also revises the term "employer" by specifying that, with certain exceptions, it is a person engaged in an industry affecting commerce who has six or more employees for each working day in each of 20 or more weeks in the current or preceding year.

The bill establishes a presumption that, for a fair presentation of a case, a jury must be given an instruction expressing the business judgment rule. The General Assembly expressly intends to abrogate the case of *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. E.D. 2006), and its progeny.

The bill further requires the courts to rely heavily on judicial interpretations of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act when interpreting and deciding Missouri Human Rights Act employment discrimination cases. Recommended as highly persuasive are two methods for analyzing employment discrimination cases as a basis for granting summary judgment. The mixed motive and burden shifting analyses are based on court rulings interpreting federal law and the bill abrogates numerous Missouri cases and certain approved jury instructions as specified in the bill.

Any award of actual damages and punitive damages shall not exceed the sum of the amount of the actual back pay and a multiple of the annual salary of the complaining party based upon the number of persons employed by the employer. Any party to an action under this section may demand a jury trial.

The bill specifies that, in an employment-related action brought under Chapter 213, the plaintiff bears the burden of proving that the protected criterion was the motivating factor in the alleged unlawful decision or action.

WHISTLEBLOWER'S PROTECTION ACT

This bill establishes the "Whistleblower's Protection Act" which codifies existing common law exceptions to the at-will employment doctrine. The bill provides that it is an unlawful employment practice for an employer to discharge or retaliate against an individual because of his or her status as a protected person.

The bill defines a "protected person" as a person who has refused to perform or reported to the proper authority an alleged unlawful act that the person had a reasonable belief violates a clear mandate of public policy. A "protected person" does not include a person employed to report or provide a profession opinion on such matters. The term "employer" is defined as an entity that has six or more employees, excluding an individual employed by an employer and certain religious or sectarian groups. The term "proper authority" is defined as a manager or supervisor employed by the employer, a designated employee of the employer, or a governmental or law enforcement agency.

A protected person aggrieved by a violation of these provisions shall have a private right of action for actual damages, unless a private right of action for damages exists under other statutes or regulations, either federal or state. The only remedies available are back pay, reimbursement of related medical bills, and, if the protected person proves outrageous conduct, liquidated damages in an amount equal to five times the compensatory damages. The court may also award the prevailing party reasonable attorney fees. Any party to an action under these provisions may demand a jury trial.

This bill is similar to HB 550, HB 552, and SB 43 (2017) and HB 1019 (2015).